



July 26, 2013

The Honorable Paul S. Diamond  
United States District Judge  
United States District Courthouse  
601 Marker Street  
Philadelphia, PA 19106  
T: (267) 299-7730  
F: (267) 299-5069

Re: Marino v. Usher | No.: 11-cv-6811 (PSD) |  
Defendants' Motion to Strike Portions of Einhorn's Report on Damages

Dear Judge Diamond:

As you know I represent the plaintiff Daniel Marino in the matter above-captioned and briefly write in response and opposition to Moving Defendants' letter dated July 26, 2013 in which they request additional time to file a reply memorandum of law in further support of their motion to strike portions of Michael Einhorn, Ph.D.'s expert report on economic damages.

Moving Defendants, after having read Plaintiff's Response, realize that their motion is procedurally defective and fatally flawed for two main reasons:

- (1) Moving Defendants' failed to cite any law in support of their motion; and therefore, a reply memorandum of law is inappropriate where defendants failed to cite any law in the first place.
- (2) The motion is procedurally defective because the proper time to raise these concerns would be during motions *in limine*.

What is more, Moving Defendants having thoroughly confused the limitations period (for purposes of *calculating damages*) with relevance, now wish to attempt to correct their defective motion by filing a reply memorandum of law, as if this alone could cure such a *faux pas*. This Court should deny Moving Defendants' request.

Respectfully, I am,

A handwritten signature in black ink, appearing to read "F. Malofiy", is written below the text "Respectfully, I am,".

Francis Malofiy, Esquire  
Cc: All counsel of Record and Mr. Van Dell